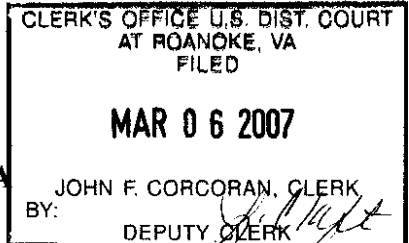


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION



HAASHIM PIERSON,) Civil Action No. 7:06cv00366
Petitioner,)
)
v.) MEMORANDUM OPINION
) AND ORDER
)
UNITED STATES OF AMERICA,)
Respondent.) By: Hon. Michael F. Urbanski
United States Magistrate Judge

By Order entered February 27, 2007, this court directed the government to respond to Pierson's claim that counsel was ineffective in failing to file an appeal after being requested to do so.¹ The government responded that Pierson's original counsel, H. David O'Donnell, is prepared to present evidence to refute Pierson's allegation regarding the filing of an appeal. In light of the government's response, this matter will be set for an evidentiary hearing after Pierson arrives at FCI Fairton, in New Jersey.

The Clerk of the Court is directed to send a certified copy of this Memorandum Opinion and Order to the petitioner.

ENTER: This 6th day of March, 2007.


United States Magistrate Judge

¹ On January 17, 2007, this court ordered an evidentiary hearing in this matter on this issue of whether Pierson requested his attorney to file an appeal, and on January 19, 2007 set the hearing for February 13, 2007. On January 30, 2007, however, the court was informed that Pierson had been transferred to another federal correctional institution, FCI Fairton, in New Jersey. Currently, he is in transit for an estimated 45 days. By Order entered February 12, 2007, the evidentiary hearing was postponed until further court order. The court directed the government to respond to Pierson's claim regarding the filing of an appeal because the government did not address this claim in its motion to dismiss and in the interests of judicial efficiency given the fact that Pierson is in transit for a lengthy period of time and the government's recent position in Clark v. United States of America, Civil Case No. 7:06cv00210 and Markle v. United States of America, Civil Case No. 7:06cv00438. The court also stated that Pierson's former counsel is now deceased. The court notes that it was never under the impression that Pierson's original counsel, H. David O'Donnell, was deceased, rather the court inadvertently construed Pierson's claim as against counsel Stanley Walter Preston, Jr., Pierson's counsel retained shortly after his final judgment.